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ABSTRACT

This assessment of the effectiveness of federal service mandates in addressing equal education goals considers the effects and policy implications of existing and theoretical mandate types. The service mandate is a legal requirement (not contingent upon federal financial aid) that states or districts provide educational services satisfying federal standards to target groups of students. Following discussions of existing mandates to serve handicapped and limited-English-proficient children and theoretical attributes of mandates, fiscal and allocative effects of mandates on federal, state, and local budgets, distributive impact, and effects on services for target groups are discussed. An analysis of policy implications concludes that while service mandates are more certain in effect, more efficient in directing resources, and more easily monitored than federal grants, state and local budgets carry the financial burden of mandated services, and existing fiscal inequities are likely to be exacerbated as federal authority is extended to allocating part of state and local revenue. It is suggested that the disadvantages of mandates can be minimized by accompanying them with grants, and that a mandate plus block grant system could provide services for present target groups as well as for the educationally disadvantaged. (MJL)

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FEDERAL SERVICE MANDATES IN EDUCATION:

A PRELIMINARY ASSESSMENT

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I. INTRODUCTION

One of the most important developments in Federal education policy since passage of the Elementary and Secondary Education Act of 1965 is the emergence of a Federal service mandate strategy for accomplishing equal educational opportunity goals. Under a service mandate, states or local education agencies (LEAs) are required to meet Federal standards in serving a certain category of children. Services have thus far been mandated for two large groups: handicapped and limited-English-proficient (LEP) children.[1] In both cases, Federal, statutes, regulations, or guidelines not only require that children be served "appropriately," but also specify particulars of the services and service delivery processes. In contrast to the more traditional categorical grant programs, Federal service mandates require the states and LEAs to furnish the Federally prescribed services at their own expense, without regard to the availability or adequacy of Federal funds. The service mandate is thus a distinct policy instrument--one that should be viewed as an alternative (or complement) to the categorical grant. This paper examines the workings of service mandates, their educational and economic effects, their relationships to grants, and the arguments for and against their use.

DEFINITION OF A SERVICE MANDATE

A Federal service mandate is defined, for the purpose of this paper, as a legal requirement imposed on states or LEAs to provide to certain pupils (the "target group") educational services that satisfy Federally established standards. The three key features of such mandates are that (1) the Federal Government defines the minimum services that states or

LEAs must provide to members of the target group, (2) the required services are "extra" or "special"--that is, different from, and generally in excess of, the services offered to other ("regular") pupils of the state or LEA, and (3) the state's or the LEA's obligation to provide these services is not contingent upon or limited by the availability of Federal financial aid. To clarify the definition, it is important to differentiate carefully between service mandates and two related policy instruments, antidiscrimination rules and targeted categorical grants.

That the target pupils must receive "extra" or "special" services is what distinguishes a service mandate from an antidiscrimination rule. Such a rule requires undifferentiated (equal or equivalent) treatment of a particular group. Antidiscrimination rules have been promulgated, for example, to ensure that racial minorities and females receive the same treatment as racial majorities and males--access to services without regard to race or sex. In contrast, Federal intervention on behalf of handicapped pupils is intended to guarantee unequal (which is to say, superior) treatment--services more intensive and specialized and (usually) more costly than the norm, designed to overcome the special learning problems of handicapped pupils.[2]

The attributes that differentiate a service mandate from a targeted categorical grant are that the mandate does not necessarily carry with it Federal funds and that the obligation imposed by the mandate is not limited by the availability of Federal or other outside money. States and LEAs must comply with the mandate whether or not there is a financial subsidy and whether or not the subsidy, if any, is sufficient to pay for

the mandated services. In contrast the state or local obligation under a grant is only to expend the grant funds (plus required non-Federal matching funds, if any) for the specified beneficiaries and activities. If grant funds do not suffice to serve all children in the target group or to serve them adequately, the grantee is under no obligation to supplement the grant with funds of its own. This distinction may become blurred in areas, such as aid to the handicapped, where a mandate and a grant coexist, but the crucial difference remains: a grant provides a fixed sum that must be expended for services of a specified kind; a mandate creates a fixed service obligation that must be satisfied regardless of the source of funds.

ISSUES CONCERNING SERVICE MANDATES

The advent of the service mandate on the elementary-secondary education scene raises many policy issues. These have been dealt with, if at all, only narrowly, in the context of the existing mandates to serve handicapped and LEP pupils. This paper deals with selected issues more generally, treating the service mandate as a generic policy instrument--one that can take many forms other than those it has already assumed. The issues to be addressed fall under three headings, as follows.

The Varieties of Service Mandates

The first set of issues concerns the nature of service mandates themselves--the forms they can take and the areas in which they can be applied. The existing mandates for handicapped and LEP pupils represent only a small subset of the possibilities. We will consider what can be mandated, how mandated services can be defined, which pupils can be served

and which Federal purposes accomplished by means of mandates, how compliance can be ensured, and a number of related questions.

Effects of Service Mandates

The effects of interest include the fiscal and allocative effects of mandates (including effects on both Federal and state-local budgets), effects on the distribution of resources among places and socioeconomic groups, and effects on the provision of educational services. We will consider and compare the effects of service mandates, categorical grants, and mandates and grants combined.

Policy Implications: Where Should Mandates be Used?

The ultimate policy issues concerning service mandates are whether the Federal Government should use them to accomplish its elementary-secondary education goals and, if so, in what forms, in what areas of education, and to what degree. We will consider whether the areas of education of handicapped and LEP children are, for some reason, especially suited for mandates, or whether mandates may also be useful in such other areas as education of the disadvantaged, and we will assess the combined uses of mandates and grants, specifically including block grants and general aid for education.

The remaining three sections of this paper correspond to these three sets of issues.

II. EXISTING AND ALTERNATIVE SERVICE MANDATES

The service mandate per se has not yet become the subject of research in the same way as has the intergovernmental grant. In the case of grants, there is a large, general, theoretical and empirical literature. Researchers have identified different types of grants, analyzed their effects, and examined the circumstances under which different types of grants should be used.[3] In the case of mandates, the relatively small amount of research that has been done has focused mainly on narrow issues concerning particular service mandates. For instance, there is a body of literature on implementation of the mandate to serve handicapped children under P.L. 94-142.[4] Only a few studies have considered the service mandate generically, and these have been primarily descriptive.[5] A theory of mandates, analogous to the existing theory of intergovernmental grants, has yet to be developed.

In this section, we provide one small contribution to a theory of service mandates in education: a preliminary taxonomic analysis of the forms that such mandates can take and of the specific attributes of mandates that may determine their effects and their usefulness as policy tools. The discussion begins with the existing mandates to serve handicapped and LEP pupils and then shifts to the hypothetical mandates that could be applied to these and other programs and target groups.

THE EXISTING MANDATES

The mandates to serve handicapped and limited-English-proficient children have common origins in civil rights law and share several other important attributes, but the differences between them are sufficient to illustrate some of the dimensions along which mandates may vary.

Education for the Handicapped

The mandate to serve handicapped children is set forth in the Education of All Handicapped Children Act of 1975 (P.L. 94-142) and in the regulations adopted under that statute.[6] It is buttressed by Section 504 of the Rehabilitation Act of 1973, which makes clear that the requirement to serve handicapped children "appropriately" is not conditional on state participation in the categorical grant program also authorized under P.L. 94-142 (Kirp and Winslow, 1978). The key features of the mandate are that

1. Each state must provide a "free appropriate" public education to all its handicapped children.
2. The nature of an "appropriate" education for each child must be determined through development of an individual educational plan (IEP).
3. Each child shall be educated in the "least restrictive environment" appropriate to that child.
4. An array of "due process" protections is established to ensure that handicapped children are placed properly and to empower parents to challenge classifications and placements with which they disagree.
5. Sanctions are established, including witholding of funds from LEAs or states.

Apart from the "least restrictive environment" provision, the mandate says nothing about the kinds or amounts of services to be provided.

Education for Limited-English-Proficient Children

The mandate to serve LEP children is embodied in the "Lau Remedies," which were promulgated by the U.S. Office of Education to implement the Supreme Court's ruling in Lau v. Nichols that LEAs are obliged, under

Title VI of the Civil Rights Act of 1964, to provide services designed to overcome the barriers to learning of children with limited proficiency in English. In 1980, the Carter administration issued proposed regulations that would have strengthened and formalized the "Lau Remedies," but these were withdrawn by the Reagan administration in 1981. The current mandate rests, therefore, on informal guidelines based on an expansive interpretation of Title VI (Kirp and Winslow, 1978) but not on explicit statutory or regulatory provisions.

The principal requirements of the "Lau Remedies" are that districts must (a) assess the English speaking abilities of pupils from homes where English is not the dominant language, and (b) if more than a minimum number of limited-English-speaking pupils are identified, offer an appropriate program to overcome their linguistic barriers to learning, which, except in special circumstances, must consist of "at least" transitional bilingual education.[7] The principal compliance enforcement mechanism thus far has been negotiation of "voluntary" compliance agreements between individual school districts and the Government (Thomas, 1981), but such agreements are backed up, albeit implicitly, by the threat of litigation under Title VI.

Similarities, Differences, and Implications for a Taxonomy of Mandates

The principal difference between the two current mandates is that the "Lau Remedies" go significantly further than P.L. 94-142 in specifying how target group children are to be served. The Government has endorsed one particular strategy for serving LEP children--bilingual education--to the virtual exclusion of alternative methods. In contrast, P.L. 94-142

cites no method of serving any category of handicapped children, even as an option, except for the general principle that children should be served in the least restrictive environment. Clearly, then, the degree to which the mode of service is specified is one of the attributes by which service mandates should be characterized.

Along the same lines, the emphasis on a process for determining appropriate services in P.L. 94-142 contrasts with the prescription of a particular instructional strategy under the "Lau Remedies." Process versus substance in defining the mandated service is another important attribute that differentiates one mandate from another.

The method of defining the target group and determining whether individual children belong in it is also an important consideration. In this respect, the two existing mandates are similar. Each enumerates the categories of children to consider, leaving the detailed operational definitions and choices of evaluation procedures and instruments to the states or LEAs. Obviously, there are different degrees of specificity with which the target group could be defined in the Federal mandate itself.

There is a conspicuous difference between the elaborate "due process," monitoring, and enforcement mechanisms of P.L. 94-142 and the informal procedures of the "Lau Remedies," but these probably reflect mainly the more and less formal legal foundations of the two mandates. Nevertheless, the nature of these accountability and enforcement mechanisms is clearly one of the relevant dimensions for characterizing a mandate.

Perhaps the most important similarity between the two mandates--and the one most suggestive of other possibilities--is that neither

specifies the substance of the mandated services with even minimal concreteness. Although the "Lau Remedies" do prescribe a service strategy, they, like P.L. 94-142, say nothing about the amount of services that must be provided, the mode of service delivery, the resources to be used, or the content of instruction. In particular, there are no requirements for any particular allotments of instructional time, resources, or funds to target-group children. One can easily conceive of mandates that are more specific in these respects and that consequently exert more direct influence over the allocation of non-Federal resources to Federally designated target groups.

THE GENERIC SERVICE MANDATE

It is easy to imagine a wide variety of service mandates, some very different from the present ones, that could be applied to handicapped and LEP children as well as to target groups and programs for which no mandates now exist. To illustrate a few of the possibilities, an alternative mandate to serve the handicapped might specify particular treatment options for different handicapping conditions and minimum staffing ratios for each; a mandate for compensatory education for the disadvantaged might stipulate performance standards for identifying the pupils to be served and minimum levels of extra funding for each eligible pupil; and a mandate for mathematics and science instruction might include specific subject matter requirements and teacher qualifications. A first step toward a generalized analysis of mandates is to set up a system for classifying these options systematically: a taxonomy of Federal service mandates.

Any Federal mandate for educational services, to be operational, must specify three items:

- o The target group and/or the program or activity to which the mandate applies;
- o The mandated service, or the mandated process for defining the service; and
- o The accountability and enforcement mechanism.

Different types of mandates can be distinguished from one another by the manner in which each of these items is defined, as explained below.

Target Group and Program

The existing service mandates are oriented toward target groups--handicapped and LEP children--whose members are identified by particular problems or conditions. It is likely that any future mandates will also be targeted in this manner (e.g., mandates might one day be issued for services to poor or low-performing pupils), but it is also possible that services might be mandated for pupils who choose particular programs (e.g., vocational education) or that mandates might be oriented toward particular activities or areas of instruction (e.g., mathematics and science instruction) rather than toward a distinct target group. The definition of the target group and/or the program or activity is one obvious attribute by which mandates must be categorized.

A related attribute is the specificity of definition of the target group or program. The existing mandates for handicapped and LEP pupils would rank in the mid-range of specificity. Each names certain classes of eligible pupils but leaves to the states or LEAs the determination of detailed category definitions and procedures for identifying eligible

pupils. A mandate with a highly specific target group definition would specify the group membership in detail--i.e., there would be Federally prescribed instruments, procedures, etc. for determining who is and who is not in the target group. A low-specificity definition, on the other hand, would give states or LEAs considerable leeway, within general Federal guidelines, to determine which pupils are to be served. An example of such a definition (from a grant program rather than a mandate) is provided by the loose rules of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) concerning the selection of pupils for compensatory education services. It is not clear, however, that it would make sense to mandate services if the target group were so loosely defined.[8]

The specificity of the target group definition may help to determine how many pupils and which pupils are served, how intensively they are served, and how widely service provisions vary among jurisdictions. It is consequently an important attribute to take into account in assessing service mandates.

Mandated Services or Processes

The single most important question to ask about an actual or proposed mandate is "what is the mandated service?" What is it that the states or LEAs are obliged to do for children in the target group? The answer determines, among other things, the cost of compliance with the Federal requirement. As we have seen, the service obligation may be specified substantively (although this is not done in either existing mandate); specified only in general terms, with the substance to be filled in (as in the mandate for bilingual education); or left unspecified, to

evolve out of a prescribed process (as in the mandate for the handicapped). Whether substance or process is prescribed is a key consideration in classifying mandates and analyzing their likely effects.

Among the substantive aspects of services that could conceivably be prescribed by a mandate are any one or more of the following:

1. Funding level or increment
2. Resource inputs (e.g., staffing ratios)
3. Instructional time (frequency, duration)
4. Subject or content of instruction
5. Service strategy or method
6. Instructional setting/mode of service delivery

The existing mandates do not deal at all with the first three variables on this list, which require quantitative specifications. Nothing in P.L. 94-142, for example, requires any particular minimum level of funding, staffing, or treatment time for a pupil with a given handicapping condition. Future mandates might contain such quantitative specifications, however, and there is precedent outside the education area for their doing so. A current mandate for Federally funded day care centers, for example, specifies minimum staffing ratios that must be provided for children in different age groups (45 CFR, sec. 71.24). It is certainly conceivable that similar requirements might be formulated for Federally aided education programs.

It is not possible to specify service requirements concretely without quantification. Any mandate that is nonquantitative or only partly quantitative, therefore, must give rise to a decision process

for filling in the key details, such as the amount of instruction to be provided, the staffing ratios, the staff qualifications, and the level of funding. This decision process may itself be part of the mandate (as in P.L. 94-142) or may be left to the discretion of states or LEAs (as in the "Lau Remedies"). One must distinguish not only between mandates that prescribe substance and those that prescribe process but also among many shadings in between. The possibilities range from a complete, quantitative specification of required services (of which there is no current empirical example) to a wholly nonquantitative specification of rules for determining services (to which P.L. 94-142 is a reasonable approximation).

The two main attributes of a process-type mandate are (1) the decisionmaking procedures themselves and (2) the participants. In the case of P.L. 94-142, the procedures include an independent educational evaluation, development of the IEP for each child, and additional "due process" procedures which can be invoked in the event that parents disagree with the LEA's decisions. Participants in the IEP process are defined explicitly in the regulations (45 CFR, sec. 121a.344). Many other combinations of procedures and participants are clearly feasible. It may be possible to sort these alternatives into several distinctive types (e.g., adversarial, consultative, administrative-discretionary) but we have not attempted that exercise for this paper.

The manner in which the required services are specified is likely to be of great importance in determining the effects of the mandate. Whether the specifications are general or specific, tight or loose, and quantitative or nonquantitative will help to determine what resources the states and

LEAs devote to target-group children, how intensively and effectively these children are served, and what disparities in services will arise among and within jurisdictions. Precisely what is mandated--what a state or LEA must do to comply--is consequently one of the most important things to consider in assessing a service mandate policy.

Accountability and Enforcement Mechanisms

The term "accountability and enforcement mechanisms" is used broadly here to encompass all the following attributes of a service mandate:

- o the assignment of responsibility for compliance;
- o the compliance monitoring system;
- o Federal (and state) enforcement processes;
- o Sanctions in the event of noncompliance.

The responsibility for carrying out the mandate must be divided in some manner between states and LEAs. Under the bilingual education mandate, the responsibility is assigned directly to LEAs; in fact, the terms of the mandate are expressed in custom-made agreements between the Federal Government and each individual LEA. Under P.L. 94-142, both the states and the LEAs are responsible for compliance, with the primary responsibility assigned to the state.[9] A number of other arrangements are possible for sharing responsibility between the two levels of government.

The compliance monitoring system includes reporting requirements, Federal monitoring and auditing activities, and arrangements whereby concerned parties (parents, interest groups) may initiate complaints

about noncomplying LEAs or states. All these arrangements can vary in intensity, frequency, breadth of coverage, rigor, and formality.

The enforcement processes range from informal negotiation (as under the "Lau Remedies"), to formal administrative action, to litigation. Depending on how responsibilities are divided, these processes may take place at the local, state, and Federal levels. Mandates can vary from one another in such enforcement-related attributes as the triggering conditions for enforcement action, the degree to which responsibility rests on the aggrieved parties to initiate action (as opposed to the state or Federal agencies), and the complexity (and costliness) of the processes that must be undertaken to obtain relief.

Finally, the sanctions that can be imposed on noncompliers include witholding or recovery of funds plus whatever sanctions may be devised by the courts. The funds in question need not be those directly associated with the mandate. Where civil rights laws are involved, such as Section 504 of the Rehabilitation Act of 1973, the Government has the power to cut off all Federal funds to a noncomplying jurisdiction. This potentially powerful sanction would not necessarily be available under all mandates, however. Similarly, the range of court-ordered sanctions may vary from one mandate to another, depending on the language of the statute.

The Overall Taxonomy

A summary of the relevant attributes of mandates is presented schematically on the following page. These attributes will be taken into account, as appropriate, in the discussion of mandate effects in Section III.

Attributes of Mandates

- Target Group and Program
  - Identification of target group and/or program
  - Specificity of target group definition
- Mandated Services or Processes
  - Substantive elements
    - Funding level
    - Resource Inputs
    - Instructional time
    - Subject or content
    - Strategy or method
    - Setting/Mode of Delivery
  - Process elements
    - Decisionmaking procedures
    - Participants
- Accountability and Enforcement Mechanisms
  - Responsibility
  - Monitoring
  - Enforcement
  - Sanctions

III. THE EFFECTS OF SERVICE MANDATES

A decision to use a Federal service mandate rather than a grant to aid a particular target group has major educational and economic implications. This section addresses, in sequence, selected issues concerning the fiscal and allocative effects of mandates, effects on the distribution of resources among jurisdictions and socioeconomic groups, and effects on the provision of educational services.

FISCAL AND ALLOCATIVE EFFECTS

The fiscal and allocative effects of a service mandate include its effects on both the expenditure and revenue sides of Federal, state, and local budgets. On the expenditure side, the effects of interest include increments in total outlays, educational outlays, and outlays for the mandated activity or target group. On the revenue side, they include changes in taxes and other revenues of each level of government. There are two different reference standards, or base cases, against which these effects should be measured: the case of no alternative program at all to aid the activity or target group in question and the case of a direct Federal categorical grant program that provides equivalent aid to the target group (the term "equivalent" needing to be defined). The former is relevant to the issue of whether to mandate services in any area where there has been or otherwise would be no federal involvement. The latter is relevant to the choice between a service mandate and a grant as the instrument for aiding a particular activity or target group. In addition, it is of interest to compare the effects of a mixed strategy--a mandate combined with a grant--

against the effects of either a mandate or a grant alone.

Effects on the Federal Budget

A service mandate alone, by definition, has no direct effect on Federal expenditure and revenue,(except for Federal administrative and enforcement costs which will not be considered in this discussion). The mandate consists only of the requirement that states and/or LEAs must provide certain services to a certain target group. The Federal Government incurs none of the cost of the mandated services directly and thus needs to raise no additional revenue. In the case of a mandate-grant combination, of course, the Government must finance the grant outlays through either increased Federal taxes or borrowing.

Even a pure service mandate, however, may have indirect effects on the Federal budget. If states or LEAs raise their taxes to finance the mandated services, there will be a decline in Federal revenue due to the deductibility of a portion of the incremental state and local taxes from Federally taxable income. While no precise estimate of this effect is available, a rough estimate is that about 12 percent of the increase in state-local taxes may be transformed into a Federal revenue loss, or "tax expenditure."[10] In addition, the changes in state and local spending and taxes produced by a sizeable Federal mandate could have macroeconomic effects, and hence effects on the Federal budget. These effects are likely to be negligible, however, since any net increases in state and local outlays due to Federal mandates are likely to be approximately balanced by increases in state and local taxes.[11]

Compared with a Federal grant program, a pure service mandate obviously has a negative effect on Federal outlays--i.e., the Government

spends very little to mandate a service compared with what it costs to subsidize the service with grants. To some persons concerned with the size of the Federal budget, this is the charm of the mandate approach: with it the Government can provide substantial benefits to the target group at little cost to the Federal treasury. To those more concerned with state and local fiscal problems, on the other hand, this is precisely what is wrong with mandates: the Federal Government sets the goal, selects the target group, and prescribes the services but imposes nearly all the costs on states and LEAs. As we attempt to show below, both views are somewhat parochial, as they focus on the Federal budget and the state-local budget, respectively, rather than on the public sector's budget as a whole, thereby obscuring the real resource allocation issues.

The amount that the Federal Government saves by mandating a service rather than paying for it with grants is difficult to ascertain, since it is not clear how large a grant is "equivalent" to a given service mandate. It makes a difference whether the criterion of equivalency is equal benefits to the target group, an equal increase in educational outlay, an equal increase in total state-local outlay, or equal cost to the nation's taxpayers. To illustrate, suppose that a Federal mandate to serve a particular target group causes states and LEAs to spend $500 million more for that group than would otherwise have been spent, and that $150 million of that sum is diverted from other education programs, $100 million is diverted from noneducation expenditure programs, and $250 million is obtained by increasing school taxes. With what size Federal grant should that mandate be compared? If the criterion is equal benefit to the target group, the equivalent grant must be substan-

tially larger than $500 million, since it is a well-established finding of grant economics that only a fraction of a categorical grant actually translates into incremental spending for the aided program. If, for example, Federal grant funds are two-thirds additive to outlays for the target group (a fraction considerably higher than found in most empirical studies), the equivalent (equal benefit) grant would be $750 million.[12] If the criterion is an equal increase in educational outlay, however, the equivalent Federal grant is considerably lower. That increase, in our hypothetical example, is only $350 million ($500 million extra for the target group, less $150 million diverted from other education programs). Consequently, the equivalent grant is one that would generate $350 million for education. Similarly, by the criterion of an equal increase in total state-local outlay, the equivalent grant is one that would generate $250 million in such spending. And finally, by the criterion of equal net cost to the nation's taxpayers, the equivalent grant is one that imposes a net tax burden of $250 million, taking into account both the Federal taxes that finance the grant and the tax relief that accrues to taxpayers of the states and LEAs.[13] In sum, although the Federal budget is obviously reduced by mandating a service rather than subsidizing it with grants, both definitional ambiguities and behavioral uncertainties make it unclear how much Federal money is saved.

Effects on State and Local Budgets

A Federal service mandate, if it has any effect at all, causes states and LEAs to incur expenses for the mandated services that otherwise would not have been incurred. The magnitude of these extra, mandate-

induced expenses depends on an array of highly specific situational factors: what services are mandated, how states and LEAs respond to the mandate, how well the mandate is enforced, how the mandated services compare with services already being provided, and so forth. Some of these factors are considered under "effects on services," below. For the purpose of this discussion, we simply take as given that states and LEAs must spend a certain extra amount on services for the target group to comply with the mandate, and we address the following questions concerning the fiscal and allocative effects of that obligation:

1. What is the effect of the obligation to spend more for a particular target group on the level of spending for education in general?
2. What is the effect on state-local spending for functions other than education?
3. What is the effect on state-local taxes?
4. How are the burdens of paying for mandated services likely to be divided between the states and the LEAs?
5. How do the fiscal effects of a mandate compare with those of a grant directed at the same target group?

The effects of a mandate on outlays for the mandated service, other outlays, and taxes can be analyzed within the same price-theoretic framework as has been used extensively in the economic literature to analyze state-local expenditure behavior. We consider first, using a diagrammatic exposition, how the imposition of a mandate affects state-local spending for education. The following diagram (Fig. 1) represents state-local preferences and trade-off possibilities between two educational services,

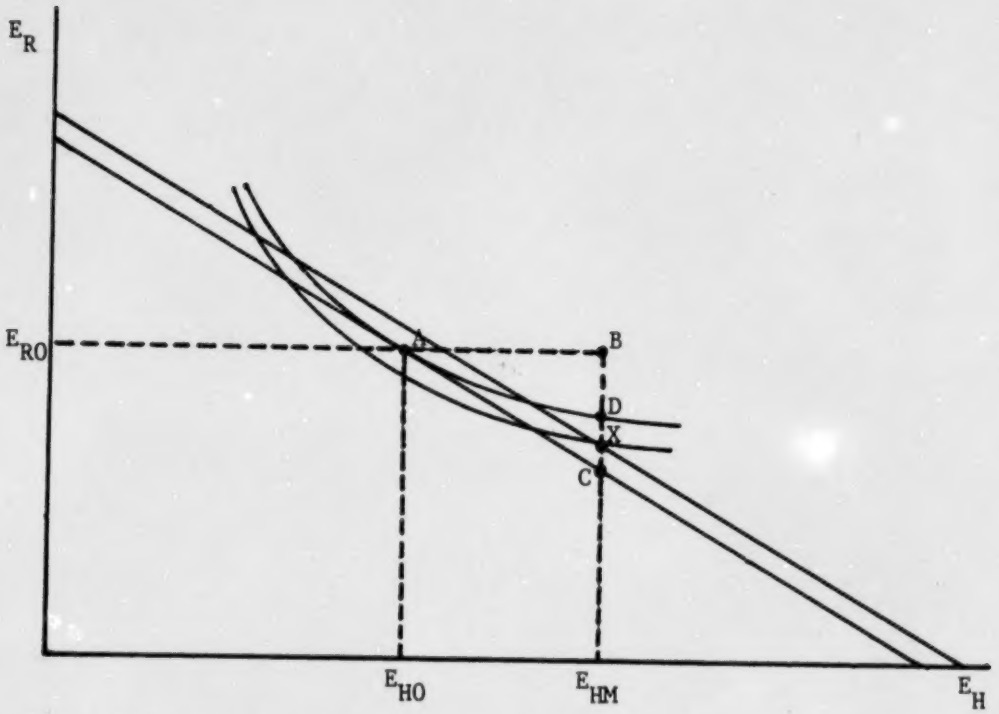

Fig. 1. Effect of a service mandate on outlays for the mandated service and other educational services

"regular" services for the majority of pupils and "special" services for a particular target group (which, for concreteness, we think of as special education services for handicapped pupils). The quantity measured on the vertical axis, E_R, is the outlay for regular services per regular pupil, and the quantity measured horizontally, E_H, is the outlay for services per handicapped pupil. The diagonal lines are constant-budget lines; each represents the various combinations of E_R and E_H that can be obtained with a given total budget. The curves are constant-utility contours; each represents combinations of E_R and E_H that are considered equally desirable by state-local decisionmakers.[14]

Suppose that in the absence of a service mandate the chosen combination of services would be that represented by point A: an outlay of E_{RO}

per regular pupil and an outlay of E_{HO} per handicapped pupil. Note that E_{HO} is greater than E_{RO}, which signifies that even in the absence of the mandate more would be spent for each handicapped child than for each regular child. The budget line (diagonal) passing through point A passes through all service combinations that can be purchased at the same cost as the combination E_{RO}, E_{HO}.

Suppose now that the Federal Government mandates a higher level of spending per handicapped pupil, E_{HM}, than state-local decisionmakers would choose of their own accord.[15] What is the likely state-local response? One possibility is that outlays for regular services remain at E_{RO}, while outlays for the handicapped rise to E_{HM} to comply with the mandate (the combination represented by point B), and that the increase in E_H is financed by drawing additional revenue into education (either by reducing outlays for noneducation functions or imposing higher taxes). But this outcome is unlikely. If the marginal benefits of spending for regular services were just sufficient to compensate for the marginal opportunity costs of revenue at point A, it is not possible for this also to be true at point B. I.e., education revenue is too high at point B relative to educational benefits received. By a similar argument, it is unlikely that the response would be to absorb the whole cost of the mandated increase in E_H by reducing E_R and thereby holding total education outlays constant (the solution represented by point C). Point C is also a disequilibrium point, since the marginal value of education is greater at point C than at point A (i.e., the service combination at point C is less desirable), while the marginal opportunity cost of revenue is the same. That is, education revenue is too low at point C relative to educational benefits received. It follows that the new equilibrium

level of E_R must be somewhere in between the levels corresponding to points B and C--lower than the initial level, E_{RO}, but not by enough to offset the full cost of complying with the mandate. In other words, the cost of the mandated increase in services for the target group is met partly by diverting resources from other educational services and partly by drawing additional resources into education.

Pursuing the matter one step further, it can be seen that the new equilibrium will be a combination of education services that is less desirable to state-local decisionmakers than the initial combination, E_{RO}, E_{HO}. Consider point D, which represents a service combination that (a) complies with the mandate and (b) is just as desirable as the initial combination (i.e., it lies on the same preference contour). Such a point cannot be an equilibrium point, since the marginal educational benefit is the same as at point A, while the marginal opportunity cost of revenue is greater. The equilibrium must be at a lower point, such as point X, which is both less preferred by state-local officials and more costly than point A.

The source of the additional revenue needed to finance compliance with the mandate (other than the part obtained by reducing other education services) cannot be analyzed with this two-dimensional diagram. It would be easy to show, however, by setting up a model of trade-offs among education, other state-local services, and state-local taxes, that in general part of the extra revenue would come from increased taxes, while part would be diverted from services other than education. The mandate, in sum, generates more services for the target group partly at the expense of other pupils, partly at the expense of recipients of other public services, and partly at the expense of state-local taxpayers.

The discussion thus far has dealt with state-local finances in the aggregate, but for some purposes it is important to distinguish between fiscal effects on state governments and those on LEAs and other local jurisdictions. Whether the states or the localities bear the costs of a mandate is important, for instance, in assessing how the costs are distributed, both geographically and among higher and lower income taxpayers. The key point concerning the state-local split is that it matters relatively little whether the Federal mandate itself imposes a fiscal obligation on the states or the LEAs. The nominal incidence of the burden, whatever it is, can be shifted easily by state action. Suppose that states are directed by a Federal mandate to ensure that a particular target group receives specified services. The state government has the power to determine (a) whether to provide the required services itself or pass the requirement on to the LEAs, (b) if the former, whether to shift part of the fiscal burden to local taxpayers by cutting back on state education aid to LEAs, or (c) if the latter, whether to assume part of the fiscal burden at the state level by providing either special aid to LEAs for the mandated service or additional general aid. Similarly, if the Federal mandate is imposed directly on LEAs (as, e.g., in the case of the present mandate for bilingual education), the state government is able to distribute the burden as it wishes between state and local taxpayers by appropriately adjusting its education aid to LEAs. The Federal Government can mandate a service but has little control over the distribution of the costs within each state.

The fiscal impact of a mandate is very different from that of a grant program aimed at the same target group. While the mandate diverts resources to the target group from other state-local functions, the grant

"spills over" resources from the nominally aided function to other state-local activities. More specifically, out of each dollar of Federal grant funds nominally earmarked for a particular target group, some portion is likely to "leak" to other education services, some portion to public services other than education, and another portion to state and/or local tax relief. These leakage rates will depend on how narrowly the purpose of the grant is defined and how tightly the uses of grant funds are controlled. But except in the special case of a grant for an activity that otherwise would receive no state-local funds at all, some substantial fraction of the grant funds is likely to substitute for, or displace, state or local funds, leaving only a fraction of the aid as net support for the intended target group.[16] Because of these displacement effects, it requires more than one dollar in grants--sometimes as much as two or three dollars--to produce one dollar of extra spending for the aided program. In this respect, the grant is a less efficient allocative tool (from the Federal perspective) than is a Federal service mandate.

Finally, a combination of a mandate and a grant provides the means whereby the Federal Government can obtain the allocative efficiency of a mandate without imposing the fiscal burden on states and localities. The combined mandate-grant generates the same services for the target group as does the pure mandate but without forcing states or LEAs to divert services from other education or noneducation programs or to increase their taxes. The only leakage of grant funds under such a combination results from mismatches between the size of the recipients' grants and their costs of complying with the mandate. Moreover, the

usual provisions for ensuring that grant funds are expended for the proper purposes and beneficiaries can be dispensed with, since that control is exerted more effectively by the mandate itself. The advantages of the combined mandate-grant approach are discussed at greater length in the final section of this paper.

DISTRIBUTIVE EFFECTS

One of the most vehement objections to mandates is that the Federal Government, which mandates the services, does not pay the bills but rather shifts the costs to states and localities. This is true in a sense, but it is also misleading, since it is not reasonable to talk about Federal taxpayers and state-local taxpayers as if they were different sets of people. The relevant distributive question is how financing the services at the state-local level, under a mandate, alters the distribution of burdens and benefits from what it would be if the financing were handled at the Federal level, as under a grant. There are two main distributive effects to consider: (1) the distribution of burdens and benefits among states and among localities within states (geographic distribution), and (2) the distribution among individuals in different income strata or among other relevant socioeconomic groups.

Geographic Distribution

To establish a frame of reference, consider first the distributive effects of a Federal grant. Under a grant program, burdens are distributed according to the incidence of Federal taxes, while grant funds (which we will take as an indicator of benefits) are typically distributed according to a grant formula. Assuming, first, that the target group is uniformly

distributed among states and that the formula allocates a flat amount per target-group pupil, the effect of the system is to redistribute resources from richer to poorer states (i.e., from those that pay relatively high Federal taxes per capita to those that pay relatively low taxes per capita). If the target pupils are not uniformly distributed but are more concentrated in lower income states (as is likely to be true of poor, disadvantaged, or LEP pupils), this redistributive effect will be accentuated. If the grant funds themselves are skewed in favor of lower income states, say because there is an inverse-income factor or some other "equalizing" factor in the formula, the redistribution will be further accentuated. If the grant formula favors the higher-income states, e.g., by linking grant amounts to levels of state-local spending, the redistributive effect will be offset. Moreover, whatever the formula, the actual distribution of benefits to target-group pupils will depend on the state-local fiscal response--the degree to which grants translate into extra services for target pupils in each state. There is no known systematic relationship between this factor and per capita income.

In contrast, a pure Federal service mandate does not redistribute revenues among states but requires each state to raise the full amount required to finance the mandated services. Assuming, first, that target pupils are uniformly distributed among states and that each state must raise the same additional revenue per target pupil to satisfy the mandate, the net effect would be to raise the relative fiscal burdens on the less able states. That is, states with modest tax bases would have to come up with the same additional revenue per target pupil as states with more ample tax bases. Moreover, this disequalizing effect of the mandate is

likely to be aggravated by two factors: first, as already noted, the target group is likely not to be distributed uniformly but to be concentrated in the lower-income states; second, the lower-income states may have to spend more per target pupil than other states to comply with the mandate because their initial (premandate) levels of services are likely to be lower. Consequently, there are likely to be significantly greater interstate disparities in tax burdens with the mandate than without it.

A possible offsetting factor is the mandate may not impose the same service requirement on every state. Indeed, the existing prototype of a Federal service mandate to the states--P.L. 94-142--gives each state considerable leeway to define for itself the required level of service to target-group pupils. If, as is likely, the lower-income states set less demanding requirements than do the better-off states, the effect on interstate disparities in tax burden will be reduced. It should be recognized, however, that any such reduction in disparities in tax burdens will be at the expense of equality of services. Target-group children in the poorer states will be less well served than children elsewhere. Looking at services and their costs together, the conclusion is inescapable: a pure service mandate increases fiscal disparities among the states, while most grant programs tend to reduce them.

A mandate-grant combination has the potential to equalize services and revenue burdens among states in a manner that neither a grant nor a mandate can accomplish alone. A grant program alone redistributes revenue in an equalizing manner but does little to equalize services. It is entirely conceivable, in fact, that a targeted categorical grant could stimulate services more in states where service levels are already high

than in states where they are low. This is remedied, to some extent, by the mandate, which tends to make service levels more uniform. On the other hand, the mandate, by itself, has the disequalizing effects described above, but these do not occur when grant financing makes it unnecessary for states and LEAs to finance mandated services from their own sources. There is the additional factor to consider of the extent to which grant funds may exceed or fall short of the level needed to pay for mandated services in each state, but this aspect would have to be analyzed in detail for each particular mandate-grant combination.

Distribution by Income Group

There are two main reasons why mandates and grants produce different distributions of revenue burdens among income groups. The first, already discussed, is the geographic factor. To the extent that mandates impose relatively heavier burdens on poorer states, they also impose heavier burdens on poorer people. The second reason is that grants and mandated services are financed under two different revenue systems--the Federal system and the state-local system, respectively, each of which utilizes a different mix of revenue sources, and hence yields a different pattern of tax incidence. The Federal revenue system, based mainly on the income tax, is generally considered more progressive than most state-local systems, which rely on mixes of property, sales, and income taxes. Thus, reliance on grants rather than mandates results in a more progressive pattern of tax burdens. Moreover, this effect is reinforced by the phenomenon of fiscal substitution--the use of some Federal grant revenue to replace state-local taxes, thereby reducing reliance on these relatively nonprogressive revenue sources.

It is more difficult to generalize about the distributions of grant-funded and mandated services among income (or other) groups because these patterns are influenced by numerous specific circumstances. Among the relevant factors are how the target-group children are distributed among income groups (or by race, sex, ethnicity, etc.). For instance, the distributive effect of mandating services to handicapped children, who are distributed across all income and social strata, is very different from mandating services for disadvantaged or LEP childre, who come mainly from poor or near-poor families. A related factor is the specificity of the target-group definition. A mandate that defines, say, disadvantage specifically in terms of low family income is likely to channel resources more decisively toward the poor than one that leaves the definition to states or LEAs. But specificity can work in both directions: a mandate to serve the disadvantaged that defined its target group on the basis of low academic performance might favor low-income groups less than a looser mandate that allowed each state to strike the balance between the low-performance and low-income criteria. A mandate that imposes uniform service standards will certainly produce smaller income-related disparities in services to target-group children than one that allows each state or LEA leeway to define the service standard itself, but how a flexible mandate (such as the existing mandates for handicapped and LEP children) compares in this respect with a grant program is not clear. A grant program allows major disparities in services to persist, but these disparities need not be linked systematically to income, race, or other pupil characteristics. The distributive outcomes on the service side depend on so many inter-

acting characteristics of the mandated service, the target group, and the state-local response that it may be futile to attempt to analyze them on anything but a case-by-case basis.

EFFECTS ON SERVICES

For the purpose of the foregoing discussions, it has simply been assumed that a mandate produces a given increment in services to members of the target group. We now go back one step to consider how that impact on services depends on the mandate itself and on the circumstances into which it is introduced. Some parts of the answer are more or less obvious. For instance, it seems clear that, other things being equal, a mandate that spells out concretely the required state-local behavior will have a stronger impact than one that is general or vague; a tightly enforced mandate will generate more services than one that is loosely enforced; and a mandate accompanied by grant funds will probably generate more additional outlays for the target group than one that places the whole financial burden on states and LEAs. Other aspects of the effects of mandates depend so strongly on particular circumstances that very little of general interest can be said about them. This is particularly true of the effects of specific mandate provisions, such as the "least restrictive environment" rule of P.L. 94-142 and the detailed rules for categorizing LEP children of the "Lau Remedies." We make no attempt, consequently, to deal comprehensively with the effects of mandates on services but rather focus on selected issues of relatively general and (it is hoped) nontrivial import. Specifically, we comment below on two issues: (1) the effects of nonspecific, process-oriented mandates on services to the target group, and (2) the efficacy of a mandate, relative

to a grant, in ensuring that the intended services are delivered to the intended beneficiaries.

Nonspecific and Process-Oriented Mandates

The effects of a specific, substantive (especially quantitative) mandate are straightforward, but those of a nonspecific, process-oriented mandate are something of a mystery. How the former affects services to the target children presumably depends on (a) what services are mandated, (b) what services were initially provided by states and LEAs (or would have been provided without the mandate), and (c) how vigorously the mandate is enforced. In comparison, the effects of the latter seem to depend on less tangible and less reliable elements: perceptions of risk and intent, implicit sanctions, and the internal dynamics of state-local decision processes. Yet the power of of a non-specific, process-oriented mandate has been demonstrated dramatically by P.L. 94-142. Although that mandate requires, under its main provision, only that handicapped pupils be served "appropriately," leaving the definition of that terms to states and LEAs, it has generated a massive flow of resources into special education for the handicapped and a level of outlay per handicapped pupil double that per regular pupil.[17] The question is: how has the seemingly vague prescription for "appropriate" services exerted such a powerful effect? While we have not analyzed specific responses to P.L. 94-142, we can suggest some plausible explanations which, if correct, have implications for the use of similar mandates for other programs and target groups.

First, there was in place, even before the enactment of P.L. 94-142, a substantial base of political support for diversion of additional

resources to the handicapped, including support among educational policymakers, administrators, and teachers. Because of the relatively uniform distribution of handicaps among the economic strata, such support did not have to be viewed in terms of redistribution across class (or racial) lines. The nature of the target group and the mandated activity, in other words, did not generate the opposition that might have been encountered had a similar mandate been proposed for other groups.

Second, a foundation for defining "appropriate" services expansively existed in the form of a well-developed body of professional doctrine concerning how handicapped pupils should be served, reinforced by many examples of "exemplary" programs for pupils with particular handicapping conditions. Moreover, with operational responsibility for services to the handicapped in the hands of special education professionals in many states and LEAs, it would have been very difficult to generate technical/professional support for minimal or token responses to the mandate. This, of course, ties in with the mandated decision process, which requires the participation of special-education professionals in planning services for each child. In a field without a similar, self-conscious corps of professionals, it would be easier for child-oriented and service-oriented concerns to be overwhelmed by budgetary/political considerations.

Third, as noted just above, P.L. 94-142 prescribed a process under which it would have been very difficult for LEA or state policymakers to impose a preference for minimal or low-cost services. The IEP process itself is central in this respect, since it forces the LEA to confront the specific problems of each child rather than to rely on categorical placement policies. The required participation of special education professionals, the child's regular teacher, and the parents reinforces

the pro-service orientation of the process, as do the requirements for parental acquiescence and the various due-process protections. While LEAs and states do retain ultimate authority to prescribe the menu of treatment alternatives and the level at which each alternative shall be budgeted and staffed, there is a strong deterrent against policies that would generate numerous complaints about service inadequacy.

Finally, along the same line, there is the implicit threat of legal action to press claims to appropriate services. While this threat is always present wherever a Federal requirement is subject to state or local interpretation, there are at least two reasons why it may be more formidable in the case of the handicapped than elsewhere. One is the very strong legal foundation for services to the handicapped, based not only on P.L. 94-142, which links the mandate to a particular grant program, but on section 504 of the Rehabilitation Act, which makes clear that access to special services is a free-standing civil right. The other is the legal-historical background, wherein the right to services was established by court action (in the PARC and Mills cases) before the enactment of Federal legislation.[18] That courts may intervene to determine whether services are appropriate may thus be a more immediate and plausible threat in connection with the handicapped than in connection with other programs or target groups.

In sum, although the mandate to serve handicapped pupils "appropriately" seems vague, a combination of circumstances has made it a powerful tool for diverting resources toward handicapped children. This does not mean, however, that the same approach would work for other groups for whom conditions are not comparable. In particular, would a mandate to serve disadvantaged pupils "appropriately" have a similar

effect? Perhaps it would in time, but at the outset a number of favorable circumstances, present for the handicapped, would be absent for the disadvantaged: political support for what many would see as a redistributive program, professional dominance of practice, and a strong legal foundation for asserting claims. Under such conditions, effective Federal intervention might require a more substantive approach.

Relative Efficacy of Mandates and Grants

Service mandates and categorical grants are both Federal instruments for generating state and local services for Federally selected beneficiaries. It is reasonable to ask, therefore, which of the two instruments (or which combination of the two) is more effective at directing the intended services to the intended beneficiaries. There are several points to consider, as follows.

Neither a mandate nor a grant is inherently more prescriptive, either with respect to the service to be provided or the group to be served. A grant, like a mandate, may define the target group tightly or loosely and may rely either on a substantive description of the pupils to be served or a set of procedures to be used for identifying them. (It is instructive to compare the rules for identifying handicapped children of P.L. 94-142 with the now superseded rules for selecting program participants of ESEA Title I.[19]) Similarly, a grant, like a mandate, may either prescribe the service in substantive detail, leave the choice of services to states or LEAs, or prescribe the decision process. If there is a difference in targeting efficacy, then, it does not stem from the greater specificity of one instrument than the other.

The factor that most clearly distinguishes a mandate from a grant is the potential span of Federal control. Under a grant program, such control--i.e., the power to specify how funds shall be used--extends only to the grant funds themselves (plus required state-local matching funds, if any). Under a mandate, the Federal Government can, in principle, control the uses of all funds needed to provide the mandated services, whether such funds are derived from local, state, or Federal sources. A grant affords less control than a mandate, therefore, except in cases where Federal grant funds (plus matching funds) are sufficient to fully fund the grant-aided service. Among the major Federal elementary-secondary grant programs, only grants for compensatory education (under ECIA Chapter 1 and its predecessor, ESEA Title I) have been of a magnitude that would let the Federal Government determine what services shall be provided to whom. More typically, Federal aid has paid only a small fraction of program costs, as in vocational education, education for the handicapped, and bilingual education, leaving the potential Federal leverage very limited. It is the Federal mandates, not the grants, that give Federal authorities its influence in the latter two areas.

Apart from the theoretical span of control, there is also the issue of how enforceable in practice are Federal requirements under a grant compared with requirements under a mandate. The difficulty of ensuring that grant funds are used for the intended purposes and beneficiaries has long been recognized. Many special grant provisions have been devised to prevent funds from being diverted to programs and pupils other than those specified in the grant legislation. Among them are "supplement not supplant" and maintenance of effort rules, comparability requirements,

prohibitions against using categorical funds for general aid, and associated auditing and monitoring provisions. These mechanisms have turned out, in general, to be riddled with loopholes and of very limited effectiveness in ensuring that resources are used according to Federal intent.[20] In comparison, it is far less difficult to ensure that the provisions of a mandate have been complied with. The difference is that between determining that a certain level of service exists (the mandate) and inferring that a certain increase in the level of services has taken place because of a particular intervention (the grant). With a mandate it is more certain and verifiable than with a grant that the intended result will be achieved.

Finally, a mandate is likely to be a more efficient service-targeting mechanism than a grant in the sense that it is likely to divert fewer resources to pupils or programs other than the intended beneficiaries. One reason for this conclusion has already been discussed: a substantial fraction of grant funds "spills over" to activities other than the target program, or to state-local tax relief, while a mandate or a mandate-grant combination has no similar effect. A second reason is that a mandate, unlike a grant, does not stimulate additional services in states or LEAs where target pupils are already adequately served. A typical grant distribution formula takes into account the number of pupils to be served and, in some cases, state or local ability to pay but not the adequacy of existing support for the target activity. Consequently, some portion of grant funds goes to places where services are already adequate (by Federal standards) and is used either to provide still more services for the target group or for other purposes

entirely. In either case, these funds are mistargeted from the Federal perspective. In contrast, a mandate has no effect at all on a state or LEA whose services already meet the Federally prescribed standards. The effect of the mandate, more generally, depends on the gap between the specified service standard and the services already provided.[21] In this respect, a mandate allocates resources to where they are needed more accurately than does a grant.

IV. POLICY IMPLICATIONS

In this final section, we address the key policy questions of why, where, and under what conditions the Federal Government should use service mandates to accomplish its education goals. We consider, first, the general advantages and disadvantages of mandates compared with grants; second, the usefulness of mandates in connection with different educational purposes and target groups; and third, the role of mandates in conjunction with other proposals for changes in Federal elementary-secondary education policy.

ADVANTAGES AND DISADVANTAGES

The discussion in Section III indicated a number of ways in which the effects of mandates differ from those of grants--sometimes for the better and sometimes for the worse. The following remarks summarize these findings from a policy perspective. We distinguish as necessary among pure mandates, grants, and mandate-grant combinations.

Advantages

Effectiveness. The service mandate is the most potent instrument available to the Federal Government for directing funds, resources, or services to a designated activity or target group. Its effect is more direct and certain than that of a grant. This greater effectiveness is presumably what would motivate proposals to use mandates in the future to carry out new Federal education goals or goals that have not been fully achieved with grant-in-aid programs.

Precise Targeting. A mandate is more efficient than a grant at directing resources to the intended program and target group and not to

other pupils or activities. Resources are not diverted under a mandate, as they are under a grant, to unintended categories of spending or to state or local tax relief. Nor are resources channeled to places where they are not needed to meet Federal service standards. The latter advantage is lost, however, when a mandate and a grant are used in combination.

Lower Total Cost. Because of the aforementioned precise targeting, a given increment in services to the target pupils can be provided at a lower total cost to the public sector under a mandate (or mandate-grant combination) than under a grant. This does not mean that the extra cost incurred under a grant is "wasted." The funds do buy services, which may be of greater value to states and LEAs than the services for which the grant is intended, but from the Federal perspective, these are lower priority expenditures for which Federal funds would not have been appropriated.

No Direct Federal Budget Impact. A pure mandate, by definition, requires no Federal outlay; it places the whole financial burden of compliance on states and LEAs. Whether this is a plus or a minus is a matter of circumstance and point of view. Certainly, in a period of Federal budget stringency, the prospect of accomplishing something without direct outlay is likely to tempt Federal policymakers (but for the obverse, see "impact on state-local budgets" under "disadvantages," below. A mandate-grant combination does involve a direct Federal outlay, but as noted above, the required expenditure is smaller than would be needed to produce the same effect if there were no mandate accompanying the grant.

Less Administrative Burden. A service mandate is likely to be considerably simpler and less administratively burdensome than a comparable grant

(i.e., one with the same target group and the same specificity of requirements). This is because there is no need under a mandate to ensure that Federal funds are used properly, to avoid "commingling," or to demonstrate compliance with an array of resource allocation constraints. Moreover, these advantages can be retained under a mandate-grant combination, since the mandate requirements eliminate the need for the customary "strings" of a categorical grant (see the remarks on block grants, below).

Ease of Monitoring and Enforcement. From the Federal perspective, it is much easier to verify compliance with a mandate than with a grant. To establish that grant funds are properly used, one must deal with such elusive unobservables as amounts that "would have been" spent for the target group in the absence of the grant. The need to work with such intangibles makes for difficult monitoring and weak enforcement. To establish compliance with a mandate, on the other hand, one need only verify that the target pupils are receiving the specified services. This remains true when the mandate is combined with a grant.

Disadvantages

Impact on State-Local Budgets. The most frequently and vehemently cited shortcoming of mandates is that they are means of accomplishing Federal goals at state-local expense. The Federal Government earns the credit for the service but state-local officials bear the political cost of raising taxes to pay the bill. (This, of course, is the obverse of the "advantage" that a mandate has no direct impact on the Federal budget.) This shifting of the burden also violates the general principle of federalism that the costs of accomplishing a national objective should

be borne by the central government and its taxpayers. The remedy for this shortcoming is a mandate-grant combination, which can be calibrated to apportion the costs between Federal and state-local levels in any desired proportion.

Fiscal Disparities. A service mandate unaccompanied by Federal funds is likely to exaccerbate existing disparities in fiscal burdens and/or educational services among states. This effect can be reduced or eliminated by combining the mandate with a grant (depending, however, on how equitably the grant funds are distributed).

Inequities in Tax Burdens. A mandate unaccompanied by Federal funds is likely to yield a less equitable distribution of tax burdens than a comparable grant program because mandated services are financed through the relatively regressive state-local tax system, while grants are financed from more progressive Federal taxes. This effect, too, can be reduced or eliminated by combining the mandate with a grant.

Federal Control. A service mandate asserts Federal authority in a particularly direct and conspicuous manner; the Federal Government takes onto itself, in effect, the power to allocate a portion of the states' and the LEAs' revenue. In comparison, a grant program, even one with many categorical restrictions, seems nonintrusive. Whether the strong form of Federal intervention is justified is a matter of opinion, which depends on how one values the Federal objective relative to the principle of state and local control. Certainly, to many at the state-local level, mandates are unwarranted intrusions, to be opposed on that basis alone. The status of a service-mandate combination, in this regard, is somewhat ambiguous. It has some of the character of an exchange transaction: a certain amount of Federal aid in exchange for state-local

provision of a Federally desired service. Nevertheless, to those opposed to Federal decisionmaking about the substance of education, any mandate, even a fully funded one, may represent an improper extension of Federal control.

Conclusions

Service mandates are relatively effective and cost-effective instruments for "getting the job done"--i.e., directing specified services to a specified target group, but service mandates alone have undesirable distributive effects and (perhaps) undesirable effects on the division of fiscal roles within the federal system. These disadvantages can be eliminated or reduced by combining mandates with grants. The main thing sacrificed under this combined strategy is the Federal Government's ability to control services without expending Federal funds, but that is a dubious advantage from a broader economic perspective, and its loss removes the strongest single state-local objection to the mandate approach. Even the combined mandate-grant approach leaves unresolved the fundamental (and perhaps forever unresolvable) issue of the proper bounds of Federal control. But within those bounds, wherever they may be, the combination of a service mandate and a simple grant is an attractive policy instrument, with several advantages over the typical categorical grant program.

PRESENT AND POTENTIAL USES OF MANDATES

Service mandates are currently used in elementary-secondary education to assist two groups--handicapped and LEP children. We consider here (1) whether the present mandates, in light of the foregoing findings, seem to be the appropriate instruments for these purposes, and (2) whether

there are other areas of elementary-secondary education where there may be reason to introduce service mandates in the future.

The Existing Mandates

LEP Children. The present Federal mandate to serve LEP children is (a) not linked to a grant program and (b) aimed at a target group (predominantly children from Spanish-speaking homes) that is distributed very unevenly among states and LEAs.[22] These two attributes, in combination, amplify some of the disadvantages of mandates cited above: the impact on state-local budgets and the undesirable distributive effects of shifting the cost of a Federal initiative to state-local taxpayers. The need to educate large numbers of LEP children is clearly a national problem, caused in large part by Federal immigration policy; yet under the present unfunded mandate, the cost falls heavily on a relatively small number of jurisdictions with large concentrations of LEP children. The division of fiscal responsibility between the Federal and state-local sectors, the geographical concentration of the burdens, and the incidence of the costs on state-local rather than Federal taxpayers all seem inappropriate characteristics of the present solution. There is a strong case for considering a mandate-grant alternative, which would provide at least the same services to LEP pupils while spreading the costs in a more rational and equitable manner.

Handicapped Children. The present mandate to serve the handicapped is part of a mandate-grant combination, but the Federal share of total funding is very low--on the order of 12 percent.[23] Thus, although both the mandate and grant elements are present, the latter is so small that the program functions, for the most part, as a free-standing service

mandate. The consequences of the low level of Federal funding are less severe in the case of handicapped than of LEP children because the target population is more uniformly distributed; however, these consequences are still by no means negligible. The less wealthy states and LEAs either must exert greater fiscal effort than the wealthier jurisdictions to support equal services or must provide less adequate services. An empirical study would be needed to determine the precise mix of the two kinds of disparities but not to establish that disparities exist. Moreover, apart from the issue of disparities as such, there is cause for concern that the absolute level of services in some jurisdictions may not qualify as "minimum adequate" by national standards. Two policy options that suggest themselves as solutions to both of these concerns are (1) strengthening the mandate-grant combination through Federal assumption of a greater share of the cost, and (2) making the definition of "appropriate" services sufficiently more specific to ensure some national minimum level of service for each type of handicapped pupil.

Possible Future Mandates

The principal target group now covered by a grant program but not a mandate is the disadvantaged, who receive compensatory education services under ECIA Chapter 1. This is a confusing group to deal with because, for various historical and political reasons, it is defined by a peculiar combination of economic and educational criteria.[24] We consider here whether a service mandate for low-income and/or low-performing children would make sense and, if so, what form such a mandate might take. We also refer briefly to other potential uses of service mandates in elementary-secondary education.

A Mandate to Serve the Disadvantaged. There are several motives for considering a service mandate as an alternative to the long-established categorical grants for compensatory education. One is the desire to improve the coverage and targeting of the program. At present, only about half the potentially eligible pupils are served, and the disparate criteria that states and LEAs use to select participants result in substantial inequities in access to services. The mandate option would be especially compelling as part of a commitment to serve all disadvantaged children, as all handicapped children are served under P.L. 94-142. A second motive is concern about the compensatory education services themselves. Under the present rules, there are few Federal requirements pertaining to the type, substance, or intensity of these services and hence little assurance of either adequate or equitable provision. A third motive is concern about the diversion of grant funds away from the target group and toward the general pupil population--a problem that was recognized as serious under ESEA Title I (Barro, 1977) and that probably has been amplified by the much looser targeting provisions of ECIA Chapter 1. A mandate-grant combination is potentially useful for addressing all these concerns.

Because of the attributes of the disadvantaged population and the existing arrangements for financing compensatory education, a mandate for the disadvantaged would have to be different in some important respects from the present mandate for the handicapped. It would be necessary at the outset to agree on a more precise definition of "disadvantaged" than has been developed under the grant programs. The key identifying factors--low family income and poor educational

performance--are continuous variables, for which explicit threshold values would have to be established. A decision would have to be made on whether educational or economic criteria would dominate or, if neither, on how the two would be combined. It would also be necessary to decide whether the present concept of Chapter 1 schools should be retained, or whether qualifying individuals should participate regardless of which school they attend. Mandated services for the disadvantaged would probably have to be defined more substantively than are mandated services for the handicapped under P.L. 94-142. While a process-oriented approach analogous to the IEP process is not inconceivable, that approach has not been characteristic of compensatory education. The emphasis under the categorical grant programs has been on designing services for classrooms and schools rather than on placing individual pupils. Moreover, there is an implicit quantitative dimension to the present grant requirements that would probably have to be preserved in some form under a mandate to ensure that disadvantaged children receive adequate services. The current Federal funding level, combined with the principle of concentration of services, has yielded levels of supplementary services amounting, typically, to $400 to $600 per pupil over and above the cost of the regular program. To maintain that level (or any other desired level), it would probably be necessary to make a certain minimum level of service one of the explicit mandate requirements.

One of the major differences between the present compensatory and handicapped programs is in the Federal Government's role in program finance. Services for the handicapped are financed mainly from state and local sources, with only a small Federal contribution. Compensatory

education, in contrast, is financed mainly (in many places, entirely) out of Federal grants. With that high level of Federal financing, a nearly fully funded mandate-grant combination is feasible. The advantages of a mandate consequently can be obtained in compensatory education without the adverse fiscal impacts and distributive effects that result from the low levels of Federal funding in the handicapped and LEP programs.

The foregoing remarks suggest a compensatory education service mandate with the following characteristics: (1) states and LEAs would be required to provide compensatory services to pupils who qualify as disadvantaged according to specified income and educational performance criteria or a combination of the two; (2) the mandate would specify types of services to be provided and minimum levels of outlays or resources per pupil; and (3) states and LEAs in compliance with the mandate would receive Federal grants in amounts sufficient to offset most of the costs of the mandated services. This, of course, is only one possible design, but it is one that would facilitate the transition from the current categorical grant program to the service mandate strategy.

Other Potential Uses of Mandates. Apart from the disadvantaged, there appears to be no large-scale target group, not already covered by a mandate, that is a likely candidate for coverage in the future. The next largest categorical grant program after compensatory education and education for the handicapped is vocational education, but vocational pupils are not a target group in the usual sense (i.e., enrollment in vocational education is voluntary and subject to reconsideration). One can conceive, of course, of a mandate to make vocational options and/or vocational placements available on certain terms or even a mandate to

provide services of a given intensity or quality, although it is hard to see how such requirements would be formulated, given the range, diversity, and changeability of vocational fields. There may be several small groups that deserve the protection of mandates, such as children of migrant workers and--a newly important group--children of recent immigrants to the United States.

Service mandates can be used not only to aid a particular target group but also to channel resources to a particular educational activity or approach. In particular, mandates may be useful in connection with the current drive to improve educational quality. Some specific possibilities include (1) a mandate to establish certain minimum curricular standards for graduation from high school, (2) a mandate for competency testing and for special services to assist those who fail to pass the tests, and (3) a mandate to use performance-based systems for rewarding teachers. Whether a mandate is the appropriate instrument to use for any of these purposes is questionable, of course, as is the justification for any direct form of Federal intervention. Nevertheless, there may be some options along this line that merit further exploration.

RELATIONSHIP OF MANDATES TO OTHER REFORM PROPOSALS

Service mandates are consistent with and complementary to two recently discussed Federal education reform policies: (1) deregulation and (2) consolidation and reliance on block grants.

Deregulation

The problem in deregulation is to eliminate unnecessary, marginal, or undue cumbersome rules and requirements without sacrificing important Federal interests in education. This can be accomplished in several

instances in conjunction with a shift from a categorical grant to a service mandate strategy. As explained earlier, such a shift makes it possible to dispense with certain whole classes of regulations--those aimed at ensuring that Federal grant funds are used properly and expended on behalf of the designated target pupils. The regulations in question include many requirements for data collection, reporting, monitoring, and other compliance-related activities. While these cannot be dispensed with entirely under a mandate, they can be materially reduced; for as we have noted, it is much easier to establish that a service meets certain standards than to determine the extent to which it has been paid for with particular funds. A shift to a service mandate strategy consequently almost automatically helps to advance the causes of deregulation and simplification of Federal requirements in education.

Consolidation and Block Grants

The problem in shifting from narrow categorical grants to broader block grants in education is to enhance state and local authority and reduce detailed Federal control without sacrificing the achievement of basic Federal purposes. It has been charged that the recent consolidation of categorical programs into a block grant under ECIA Chapter 2 did entail that kind of sacrifice. For instance, support has not been maintained under the block grant for local school desegregation projects formerly funded under a categorical grant, ESEA Title VI. The fear that important national objectives would be sacrificed contributed to the defeat of broader consolidation proposals, which would have brought compensatory education and education for the handicapped, among others, under a single funding authority.

The service mandate provides the means whereby Federal funding mechanisms can be consolidated to any desired degree, while ensuring continued support for Federally protected programs and target groups. The mandate does this by establishing state and local service obligations independent of the availability of Federal funds. Once such obligations are created, it ceases to matter how funds are labeled. There would be no effect on outlays for the handicapped, for example, if the Government relabeled its grants under P.L. 94-142 "general education aid." The required outlay is determined by the mandate to serve handicapped children "appropriately," not by the amount of earmarked funds. It takes only a small leap of imagination, then, to envision a system in which there are multiple service mandates--for the disadvantaged, handicapped, limited-English-proficient, etc.--specified with whatever concreteness is necessary to ensure that each group is adequately served, and only a single block grant or general aid program to assist states and LEAs in meeting their overall responsibilities in education. This system would be simpler, more flexible, and easier to administer than the present one, and would, if appropriately designed, provide at least the same protection to the children in each target group.

NOTES

1. Services for handicapped children are mandated by Section 504 of the Rehabilitation Act of 1973 and by the Education for All Handicapped Children Act of 1975 (P.L. 94-142) and their accompanying regulations. Services for children with limited proficiency in English are mandated by Department of Education (formerly Department of Health, Education, and Welfare) guidelines, known as the "Lau Remedies," adopted pursuant to the Supreme Court decision in Lau v. Nichols concerning the applicability to such children of Title VI of the Civil Rights Act of 1964.

2. Some civil rights lawyers would reject this distinction, arguing instead that what we term "service mandates" and "antidiscrimination rules" are instead all requirements intended to ensure equal opportunity or prevent discrimination, and that it is only the specific content of equal opportunity that varies from one group to another. That is, for some groups nondiscrimination requires identical treatment, while for others identical treatment would be discrimination, since the children in question (handicapped, non-English speaking, etc.) can not benefit equally (or at all) from the "regular" treatment. For discussions reflecting this broad equal opportunity perspective, see Levin (1977) and Kirp and Winslow (1978). For the purpose of this analysis, which emphasizes the effects of Federal interventions on services, fiscal variables, and distributions of resources, it is important to make the indicated distinction between requirements for identical treatment (nondiscrimination) and requirements for special or appropriately differentiated treatment, which we term service mandates,

3. For an exposition of the theory of intergovernmental grants to school districts, see Barro (1974); for a review of empirical studies of the effects of education grants, see Tsang and Levin (1982).

4. See, e.g., the the official U.S. Government report on implementation, U.S. Office of Education (1979).

5. Studies that deal with Federal mandates include Congressional Budget Office (1979) and Lovell et al. ((1979). Both use the term "mandate" much more broadly than it is used in this paper. A similarly broad study of mandates imposed on local governments by states is ACIR (1978).

6. New proposed regulations for P.L. 94-142 were issued by the Reagan administration in 1982 but subsequently withdrawn in response to widespread criticism. The regulations now in effect and referred to herein are consequently the original regulations adopted in final form in 1977.

7. The requirement for bilingual education is not absolute; an LEA is theoretically entitled to use another method if it can demonstrate that it is equally effect. As Kirp and Winslow (1978) have pointed

out, however, such a showing is virtually impossible to make, and bilingual education is consequently a de facto requirement.

8. Under ECIA Chapter 1, and even under its somewhat more tightly regulated predecessor, ESEA Title I, LEAs and states were given considerable leeway regarding which categories of schools and pupils to serve, where to draw cut-off points for eligibility, which specific criteria of educational deprivation to use, and how to make the trade-off between number of pupils served and intensity of service. Under such circumstances, LEAs and states would be free to respond to the Federal prescription of required services by adjusting the size and make-up of the target group. Thus, there would be no true mandate for services to a specific, Federally defined category of target pupils.

9. Although P.L. 94-142 assigns specific duties to both states and LEAs, the regulations make clear that state agencies carry the ultimate responsibility for statewide compliance (45 CFR, sec. 121a.600), have oversight responsibility with respect to LEAs, and may be called upon to serve children directly if LEAs fail to satisfy the requirements of the mandate.

10. This estimate is based on (a) an estimate prepared by the Congressional Research Service that tax subsidies, or tax expenditures, for education due to the deductibility of state and local school taxes amount about $10.5 billion in FY 1982 and (b) Census Bureau data showing that elementary-secondary expenditures financed out of own-source revenue are on the order of $90 billion. The ratio of the former to the latter yields an estimate of the average proportion of state-local school taxes that translates into a Federal revenue loss. It is likely, however, that the marginal rate of Federal revenue loss would be greater than the average rate, which means that 12 percent may be an underestimate of the fraction of the cost shifted to the Federal Government.

11. The macroeconomic effects of a change in the Federal or the state-local budget are likely to depend on how that change is financed. An increase in outlays is usually expected to be stimulative if the increase is financed through an increase in the deficit (borrowing) rather than through increased taxes. State and local governments, unlike the Federal Government, are generally required to balance their budgets, which means that little if any stimulative effect can be expected from increases in state and local outlays. There is the possibility, however, that states or LEAs would finance some increased outlays by drawing down their existing balances, with some net stimulative effect.

12. Feldstein (1978), for example, reported that 72 percent of Federal Title I grants translate into increased educational spending. Note that this percentage includes both the grant funds that translate into spending for the target pupils (the disadvantaged) and those expended for other educational purposes. Other empirical findings of this type are reported in Tsang and Levin (1982).

13. To produce a given net increase in tax burdens, a Federal grant would have to be some multiple of that given amount, since a certain fraction

13. To produce a given net increase in the burden on the nation's taxpayers, a Federal grant would have to be some multiple of that given amount, since a certain fraction of the grant will translate into state-local tax relief. Moreover, to compute the appropriate size of the Federal grant, the "tax expenditure" factor must also be taken into account--i.e., that any reduction in state-local tax burdens will mean a fractional increase in Federal tax collections because of the reduced itemized deductions taken by state-local taxpayers on Federal income tax returns.

14. This diagram corresponds to a model of utility maximizing behavior by state and local officials, in which the utility function to be maximized is $U[U_1(E_R, E_H), U_2(E_0), U_3(T)]$ and the budget constraint (assuming no grants) is $E_R P_R + E_H P_H + E_0 N = TN$, where T is per capita taxes, E_0 is per capita outlay for state and local services other than education, P_R and P_H are the numbers of regular and handicapped pupils, and N is population. The diagram is only capable of showing trade-offs between the two kinds of education outlay for given combinations of E_0 and T.

15. It is not necessary to assume that the Federal mandate specifies directly the level of spending per handicapped pupil. One can speak, more generally, of a mandate that results in a given level of outlay per pupil (higher than the level state-local policymakers would otherwise select), regardless of whether the mandate itself applies directly to outlays, resources, particulars of service, or, as in P.L. 94-142, the process for determining all of the above.

16. Where there are no state-local funds at all, there is no opportunity for fiscal substitution; hence, the grant funds must actually be expended for the intended purpose for the grantee to be in compliance with the terms of the grant. More generally, the smaller the grant relative to the scale of total outlay for the grant-aided activity, the easier it is for the grantee to substitute grant funds for state-local funds that would otherwise have been expended for that activity and the higher the expected rate of leakage.

17. By 1977-78, the "added costs" of special education for the handicapped (i.e., costs in excess of those that would have been incurred for the same number of regular pupils) were over $7 billion, and the total cost of education per handicapped child was 2.17 times the cost per regular child (Kakalik et al., 1981).

18. In the PARC case (Pennsylvania Association for Retarded Children v. Pennsylvania, the parties entered into a consent agreement recognizing the right of each mentally retarded child to a "free, public program of education and training appropriate to the child's capacity;" in Mills v. Board of Education, the court ruled that handicapped children could not be denied access to education, even though costly programs were required to deal with their problems (see Levin, 1977, for elaboration).

19. Like P.L. 94-142, ESEA Title I established a process for identifying target pupils, but the process in ESEA Title I was considerably more elaborate. It involved selecting taarget schools, selecting categories of pupils to be served, establishing criteria for measuring pupil need within categories, establishing cut-off points, etc.--in other words, a process set forth in considerably more regulatory detail than the processes in the present mandates.

20. For discussions of these resource allocation mechanisms and their weaknesses, see Barro (1977, 1978).

21. A mandate-grant combination is subject to one of the two main kinds of mistargeting encountered under a conventional grant: the distribution of grant funds is unlikely to reflect adequately the propensity of the grantee to fund the aided service out of its own resources in the absence of the grant, and thus some grant funds will be allocated to places that would have funded the service adequately without assistance. However, the other type of mistargeting does not arise: diversion to other uses of grant funds needed to bring services for the target group up to minimum standards.

22. There is Federal grant money for bilingual education under the Bilingual Education Act (ESEA Title VII), but it is not linked to the service mandate in that (a) only a relatively small number of selected districts receive the grants, while many more districts are subject to the mandate, and (b) the grants are intended only to support limited-term start-up and demonstration projects, not to provide continuing support for services.

23. P.L. 94-142 authorized a rising Federal share of financial support for special education programs, under which the Federal contribution would have risen by now to 40 percent of the total. However, actual funding has been "capped" in the appropriations process, resulting in the present small fraction of Federal support.

24. Under the Federal compensatory education program, target schools are identified on the basis of concentrations of pupils from low-income families (although these results can be modified by educational considerations), while individual pupils within schools are identified strictly by educational performance criteria and not by individual economic status.

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